N. PROBATION OFFICER AND PRIVATE PERSON SEARCHES

As a condition of parole or probation, the Court may order that the defendant subject his person, residence or vehicle to searches that will be conducted by his/her probation officers. Parolees have a diminished expectation of privacy and are afforded the opportunity to either except or reject this "search" as a condition of release. The search is not extended to the police, unless the police officer is under the direction of the probation officer at the time of the search.

The Fourth Amendment is directed toward government agencies (local police, etc.) and, in limited capacity, government workers such as schoolteachers. Consequently, any warrantless seizure of evidence by a private citizen, not acting as an agent of the government, may be used at trial even if the citizen trespassed or did not have probable cause to seize a person or item.

WARRANTLESS SEARCHES CONDUCTED BY PROBATION OFFICERS OR PRIVATE PERSONS SELECTED CASES

ROMAN V. State (Search of Parolee Without Warrant) bulletin no. 7. Conditions of a search must be specific and not left to the discretion of the parole officer. The judge will specify the conditions at the time of sentencing. There must be a direct relationship between the searches and the nature of the crime for which the parolee was convicted. The right to conduct such searches is limited to parole officers.

THOMAS, Gavis v. State (Search of Wallet by Police Officer as Condition of Probation) bulletin no. 303. THOMAS was on felony probation for first-degree vehicle theft and driving while intoxicated after consuming alcoholic beverages (not drugs). One of the conditions of probation required him to submit to searches for controlled substances. During one such search, a police officer found crack cocaine in his wallet. THOMAS argued that the sentencing judge was in error when he made the search for controlled substances a condition of probation because he had not been convicted of drug related offenses. The court of appeals said the condition was not unreasonable because THOMAS had a prior history of drug abuse and allowing such searches is part of the rehabilitation process and aids in the protection of the public.

REICHEL v. State (Seizure of Parolee by Police Who Suspect He is in Violation of Conditions of His Release) bulletin no. 289. Homer police observe REICHEL in a bar. One of the officers suspected that he was violating his conditions of release on parole by being in the bar. Police followed him outside, seized him and called his probation officer, who directed the police to arrest him. This took about twenty minutes. The court ruled, affirming ROMAN above, that the police did not have the authority to make the investigative stop.

SNYDER v. State (Warrantless Search by a Private Citizen) bulletin no. 17. An airline employee, through the course of his duties, searched an airfreight shipment and discovered marijuana. Prior to calling the police, the employee put the evidence on a table so that it would be in the officer's plain view. The Court upheld the evidence because the employee was not acting as an agent of the police and the evidence was subject to seizure.

McCONNELL v State (Warrantless Search by Airline Employee) bulletin no. 24. Search of freight and seizure of drugs upheld. A subsequent search the next day of one package that had been shipped by the police was upheld because it was in their control from the time it was shipped until seizure.

PAYTON v New York (Warrantless Entry into Private Residence to Effect Arrest) bulletin no. 34. Police, without a warrant, made a forced entry into an apartment to effect an arrest. The defendant was not present at the time; however, in plain view was a shell casing. The shell casing was seized and subsequently introduced as evidence at the trial. The evidence (shell casing) was suppressed because of the warrantless entry.

State statutes cannot be enacted which enables police to violate the constitution. Twenty-five states (including Alaska) had enacted statutes that allowed police to make warrantless entry into a private residence based on probable cause. The U.S. Supreme Court ruled that these statutes were unconstitutional because they violated the Fourth Amendment. The court stated that the Fourth Amendment has drawn a firm line at the entrance to a house and that, absent exigent circumstances, that threshold may not be reasonably crossed without a warrant.

D.R.C. v State (Search of Juvenile Student by Teachers) bulletin no. 58. The teacher conducted a search of a student before calling his parents or the police. After discovering evidence, the police were called and the evidence was in their plain view.

NELSON v State (Involuntary Seizure of Blood -- DWI) bulletin no. 61. Subject involved in an automobile accident refused to provide police with consent to have a blood test performed. The treating physician, without any prompting from police, seized the blood for diagnostic purposes, therefore, the results are subject to subpoena and properly admissible.

METIGORUK v Anchorage (Statement to Private Security Guard) bulletin no. 62. Private security guards are not required to give Miranda warnings to individuals they arrest unless the guards are working as government agents.

CULLOM v State (Seizure and Search of Person by Security Guard) bulletin no. 78. A private security guard arrested the subject for shoplifting. Prior to arrival of police, the guard searched the subject and discovered drugs. The drugs were in the police officer's "plain view" once he arrived and were properly admitted at trial.

JACKSON v State (Search by a Private Security Guard) no bulletin. The Fourth Amendment does not apply to private citizens and private security guards who are not acting as agents for the State.

LOWERY v State (Private Security Guard Acting as Agent of the State) (no bulletin). A private guard was hired by the state coroner to secure a private residence in which a murder had occurred. The victim was discovered when the fire department made a forced entry. The discovery led to the arrest of the suspect, the spouse. While in the course of his duties, the guard found evidence that implicated the spouse's role in the murder. Because the guard was acting as a government agent (the court) the evidence was ruled inadmissible. The police should have obtained a warrant prior to seizing the evidence from the guard.

New Jersey v T.L.O. (Search of Student by School Officials) bulletin no. 90. If school teachers are government employees, they do not need to obtain a warrant before searching a student. If evidence is seized, it must be in the plain view of the police upon their arrival. This applies only if the teacher is not acting as an agent for the police.

SAFFORD SCHOOL DISTRICT v Redding (Strip Search by School Officials) bulletin no. 341. When school officials required a 13-year-old female to pull her bra out and to the side and shake it, and to pull the elastic on her underpants, thus exposing her breasts and pelvic area to some degree, the court ruled that lacking sufficient suspicion to extending the search to this degree violates the Fourth Amendment.

STAATS v State (Warrantless Entry Into Hotel Room by Private Citizens Who Invited Police) bulletin no. 103. The hotel had double booked a room and a second party assigned to the room discovered drugs in a suitcase already in the room. The police were called and their subsequent warrantless entry was authorized by consent of the second party.

WEBB v State (Warrantless Search by a Private Citizen) bulletin no. 106. The search of a package by an air freight employee led to the arrest of a recipient, although the recipient had not opened the package prior to arrest. The police had probable cause to arrest and could infer that the subject was aware of the contents based on the "totality of circumstances." THIS CASE WAS REVERSED - SEE BULLETIN NO. 120.

O'CONNOR, et. al. v ORTEGA (Search of Government Employee's Desk by Supervisor) bulletin no. 111. Government employees do not forfeit their Fourth Amendment rights because the government rather than a private employer employs them. On the other hand, there is no requirement that an employer must obtain a warrant to enter an employee's office, desk or file cabinet when there is a work related need.

GRIFFIN v Wisconsin (Warrantless Search of Probationer's Residence by Probation Officer) bulletin no. 114. A parolee can be searched by a probation officer with information less than probable cause when it is suspected that a parolee is in possession of contraband material, and such searches are clearly spelled out as a condition of parole "pursuant to a regulation."

WEBB v State (Involuntary *Miranda* Waiver) bulletin no. 120. A *Miranda* waiver cannot be coerced by seizure and retention of a person's property. In this case, a driver's license was held and would be returned only when the suspect went to the police department and gave a statement. The suspect's right to remain silent was balanced by his loss of personal property (driver's license) and the knowledge that he would have to drive illegally if he did not comply. THIS CASE REVERSES BULLETIN NO. 106.

SHAMBERG v State (Search of Student by School Officials) bulletin no. 126. School officials do not require warrants or probable cause to conduct searches on school property, but such searches must be based on reasonable suspicions that contraband will be found.

JONES v State (Search by Private Security Guard) bulletin no. 131. A store security guard searched the purse of a suspected shoplifter of jewelry and found drugs. The drugs were given to police who charged misconduct involving a controlled substance. The search is upheld since the guard was not acting as an agent of the government and the search was reasonable, based on the circumstances.

MILTON v State (Warrantless Search of Third-Party Custodian's Bedroom) bulletin no. 187. Milton was a third party custodian for Gutierrez. A probation officer conducted a search of Milton's residence based on information that Gutierrez was either using or distributing drugs. The officers entered Milton's bedroom and discovered letters and bills on a nightstand, some of which were addressed to Gutierrez. White powder was also noted on the nightstand. A suitcase inside a closet in Milton's bedroom was searched and drugs were found. Drugs were also found in Gutierrez's bedroom. The case was remanded back to the Superior Court. The court ruled that when a probationer is sharing living quarters with another person, the probation officer may search all areas where the probationer has common authority to use or control even if it is not exclusive. The searching officer must have reasonable suspicion that the item to be searched is owned, shared or controlled (even if not exclusive) by the probationer. The third party custodian has a limited expectation of privacy.

SKINNER, Secretary of Transportation v Railway Labor Executives Union; NATIONAL TREASURY EMPLOYEES UNION v Von Raab, US Customs Service; LUDTKE v Nabors Drilling bulletin no. 129. Government regulations pertaining to railroad employees that require warrantless mandatory drug/alcohol screening does not violate Fourth Amendment rights, if the compelling government interests outweigh privacy concerns, such as safety sensitive tasks. In the case of the US Custom Service, results of drug testing are not available for law enforcement prosecution, but are used to detect drug use prior to assignment of personnel to sensitive positions. In both cases the public interest is balanced against the individual's privacy; warrants were not required.

In LUDKE v Nabors Drilling, the Alaska Constitution does not extend the right of privacy to the actions of private parties. In this case, drug testing is conducted during working hours and is related to safety work issues rather than overall controlling of illegal drug use. In addition, the policy was clearly stated to all employees prior to implementation. The drug testing policy was upheld.

LAU v State (Exclusion of Evidence Because of Corrections Officer's Improper Conduct) bulletin no. 190. While undergoing DWI processing, an on-duty corrections officer who was a friend of the defendant and was guarding the defendant, actively dissuaded the defendant from seeking an independent blood test. The corrections officer dissuaded the defendant from exercising his rights and the earlier breath test was suppressed (Exclusionary Rule).

Vernonia School District v ACTON (Mandatory Drug Testing of Students Participating in School Athletic Programs) bulletin no. 191. Athletes were required to submit to a drug testing program in order to participate in sports programs. This test was unsupported by probable cause. A search, unsupported by probable cause can be constitutional when special needs (which existed in this drug infested school district) beyond the normal need for law enforcement make the warrant and probable cause requirement impracticable.

Board of Education v EARLS (Mandatory Drug Testing of Students Participating in Extracurricular Activities) bulletin no. 258. The mandatory drug testing of students who participate in after school activities such as cheerleading, choirs, Future Farmers of America, etc., does not violate the Fourth Amendment.

JOUBERT v State (Lack of Consent To Probation/Parole Officer Negates Search of Parolee's Premises) bulletin no. 208. A search of a probationer's residence can take place under the terms of the Probationers Release Agreement upon request of the probation officer, but the parolee must communicate in some way with the probationer before conducting a search.

State v LANDON (Search of Convicted Person by Corrections Officer Incident to Incarceration in Prison) bulletin no. 217. Drugs were found during a search of a person's personal belongings prior to long-term incarceration in a correctional facility. Since this was a long-term incarceration vs. a person being detained in jail who may shortly post bail, the detailed search was upheld. See Reeves v. State.

State v JAMES (Warrantless Search of Probationer's Residence as Condition of Probation) bulletin no. 229. A probation officer searched the defendant, who was on probation and subject to warrantless searches of his person, personal property, residence, or any vehicle in which he might be found. The defendant refused the search, but the search was conducted without his consent. Under this provision of his probation, the probation officer was authorized to conduct the search even without the consent of the defendant. Further, when another person is involved in such as a shared living situation, the officer may search all parts of the premises that the probationer has common authority to use.

U.S. v KNIGHTS (Investigatory Search as Condition of Probation) bulletin no. 253. As a condition of probation, KNIGHTS agreed to "submit his person, property, place of residence, vehicle, and personal effects, to search at any time, with or without a warrant or probable cause by any probation officer or law enforcement officer." Police suspected he was involved in arson; they made a warrantless search of his residence and collected evidence of that crime. The Fourth Amendment does not limit this condition to "probationary conditions" only. Investigative searches are also permitted.

SAMSON v California (Fourth Amendment Does Not Prohibit Police from Conducting Suspicionless Search of a Parolee) bulletin no. 310. A police officer was aware that a condition of SAMSON's release on parole authorized a search of his person by law enforcement officers "with or without a search warrant and with or without cause." The police officer conducted a search of SAMSON's person and found drugs. The court said this was a good search because SAMSON had already agreed to these conditions of release. After all, he could have remained incarcerated if he did not want to allow theses searches.

PAUL v State (Warrantless Police Viewing Of Videotape Seized From A Private Residence By A Citizen/Sexual-Assault Victim) bulletin no. 262. Assault victim broke into his uncle's locked bedroom and seized videotape that contained his uncle and his 15 year-old cousin engaging in sexual acts. He brought the tape to the police, who, without obtaining a search warrant, viewed the tape. Based on their observations, the police obtained a search warrant for PAUL's residence where additional videotape and other evidence was seized. Court said the police did not need a search warrant prior to viewing the tape because it came into their possession lawfully.